

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

LEAGUE OF UNITED LATIN AMERICAN)	
CITIZENS – RICHMOND, <i>et al.</i>)	
Plaintiffs,)	
v.)	Civil No. 1:18-cv-00423
)	
PUBLIC INTEREST LEGAL FOUNDATION, <i>et al.</i>,)	
Defendants & Third-Party Plaintiffs,)	
v.)	
)	
VIRGINIA DEPARTMENT OF ELECTIONS,)	
Third-Party Defendant.)	

MOTION TO DISMISS THIRD-PARTY COMPLAINT

Pursuant to Rule 12(b)(1) & 12(b)(6) of the Federal Rules of Civil Procedure, the Virginia Department of Elections moves that this Court dismiss the Third-Party Complaint filed (as part of Dkt. 66) by Defendants, the Public Interest Legal Foundation (PILF) and J. Christian Adams, on the following grounds:

1) This Court lacks subject matter jurisdiction because state sovereign immunity bars Defendants’ “contribution” claim in the Third-Party Complaint, so the Third-Party Complaint should be dismissed with prejudice pursuant to Rule 12(b)(1).

2) This Court lacks subject matter jurisdiction because Defendants lack standing to sue the Virginia Department of Elections concerning the Department’s interactions with other voters, so the Third-Party Complaint should be dismissed with prejudice pursuant to Rule 12(b)(1).

3) The Third-Party Complaint fails to allege sufficient facts to state a claim that is plausible on its face that the Department is liable for the reports and statements by Defendants

PILF and Adams that are the basis of Plaintiffs' claims, so the Third-Party Complaint should be dismissed with prejudice pursuant to Rule 12(b)(6).

The above grounds for this motion and supporting argument and authorities are set forth fully in the accompanying memorandum in support of this motion.

Respectfully submitted,

VIRGINIA DEPARTMENT OF ELECTIONS

By: /s/ - Joshua D. Heslinga
Counsel

Mark Herring
Attorney General of Virginia

Cynthia E. Hudson
Chief Deputy Attorney General

Stephen A. Cobb
Deputy Attorney General

Heather Hays Lockerman (VSB # 65535)
Senior Assistant Attorney General, Section Chief
hlockerman@oag.state.va.us

Joshua D. Heslinga (VSB # 73036)
Assistant Attorney General
jheslinga@oag.state.va.us

Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-3847
fax: (804) 786-2650

Attorney for the Virginia Department of Elections

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on September 27, 2018, I am electronically filing the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Anisa A. Somani (Anisa.Somani@probonolaw.com)
Nicole M. Cleminshaw(Nicole.Cleminshaw@probonolaw.com)
Geoffrey M. Wyatt (Geoffrey.Wyatt@probonolaw.com)
Sean M. Tepe (Sean.Tepe@probonolaw.com)
Lauren A. Eisenberg (Lauren.Eisenberg@probonolaw.com)
Samuel Levor (Sam.Levor@probonolaw.com)
Andrew Hanson (Andrew.Hanson@probonolaw.com)
SKADDEN ARPS SLATE MEAGHER & FLOM
1440 New York Ave. NW
Washington, DC 20005

Allison Riggs (AllisonRiggs@southerncoalition.org)
Jaclyn Maffetore (JaclynMaffetore@southerncoalition.org)
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 West Highway 54, Suite 101
Durham, NC 27707

Cameron Kistler (cameron.kistler@protectdemocracy.org)
PROTECT DEMOCRACY PROJECT
2020 Pennsylvania Ave. NW #163
Washington, DC 20006

Larry Schwartzol (larry.schwartzol@protectdemocracy.org)
PROTECT DEMOCRACY PROJECT
10 Ware St.
Cambridge, MA 02138

Andrew G. Celli, Jr. (acelli@ecbalaw.com)
Alanna Kaufman (akaufman@ecbalaw.com)
EMERY CELLI BRINCKERHOFF & ABADY LLP
600 Fifth Ave. at Rockefeller Center, 10th Floor
New York, NY 10020

Attorneys for Plaintiffs

Michael J. Lockerby (mlockerby@foley.com)
Eli L. Evans (eevans@foley.com)
FOLEY & LARDNER LLP
Washington Harbour
3000 K. Street NW, Suite 600
Washington, DC 20007-5109

William E. Davis (wdavis@foley.com)
Ana Romes (aromes@foley.com)
FOLEY & LARDNER LLP
2 South Biscayne Blvd., Suite 1900
Miami, FL 33131

Attorneys for Defendants and Third-Party Plaintiffs

/s/
Joshua D. Heslinga (VSB # 73036)
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-3847
fax: (804) 692-1647
jheslinga@oag.state.va.us

Attorney for the Virginia Department of Elections

01721338